Exhibit F Annexed to Affidavit of Harold B. A'Hearn

10. Normal & Surtax for separate returns ...	17,042.66
11. Normal & Surtax for joint returns Multiply Line 10 by 2	34,085.32
12. Alternative tax if applicable	
13. *Less income tax payments to a foreign country or U. S. possession Income tax paid at source	
14. Tax liability	34,085.32
15. Tax liability disclosed by return	4,910.94
16. Deficiency	29,174.38
50% penalty asserted under provisions of section 293(b)	14,587.19
Penalty asserted under provisions of section 294(d)(2)	1,426.63
Total penalties	$16,013.82

* If standard deduction was used in arriving at amount as shown on Line One above, disregard Line 13.

(UNY #312)

Exhibit C Annexed to Affidavit of Harold B. A'Hearn

Statement

Name Frank Costello

Schedule ..... Year ended December 31, 1946

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return		$23,673.90
As corrected		56,159.31
Net adjustment as computed below		32,485.41
Unallowable deductions and additional income:		
(a) Other income	$35,347.95	
(b) Partnership income	3,478.16	
(c) Contributions	1,100.00	
TOTAL		39,926.11
Nontaxable income and additional deductions:		
(d) Contributions	$ 2,458.85	
(e) Interest paid	4,981.85	
TOTAL		$ 7,440.70
Net adjustment as above		32,485.41

Exhibit C Annexed to Affidavit of Harold B. A'Hearn

Frank Costello — Statement

TAXABLE YEAR ENDED DECEMBER 31, 1946

EXPLANATIONS OF ADJUSTMENTS

(a) It has been determined that you earned taxable income in the amount of $35,347.95 which you did not report on your return.

(b) It has been determined that taxable partnership income reported on your return was understated in the amount of $3,478.16.

(c) The deduction for contributions claimed on your return is disallowed to the extent shown for items not allowable under the provisions of the Internal Revenue Code.

(d) You have been allowed an additional deduction for contribution in the amount of $2,458.85.

(e) You have been allowed an additional deduction for interest in the amount of $4,981.85.

Exhibit C Annexed to Affidavit of Harold B. A'Hearn

Name Frank Costello — Statement

Schedule No. ..... Year ended December 31, 1946

COMPUTATION OF INCOME TAX — INDIVIDUAL

FOR CALENDAR YEARS 1946 AND 1947

1.	Net income, from Schedule No.	$56,159.31
2.	Less: Exemption	500.00
3.	Balance subject to tax	$55,659.31
4.	Combined tentative normal and surtax**	31,064.48
5.	Less: 5 percent of amount on line 4	1,553.22
6.	Total income tax	29,511.26
7.	Total alternative tax, from Schedule No.	
8.	Less: Income tax paid to a foreign country* ... $ —— Income tax paid at source*	
9.	Income tax liability	29,511.26
10.	Income tax liability disclosed by return ..	8,338.72
11.	Deficiency in income tax	$21,172.54
	50% penalty asserted under provisions of section 293(b) of the Internal Revenue Code	$10,586.27

Exhibit C Annexed to Affidavit of Harold B. A'Hearn

6% penalty asserted under provisions of section 294(d)(2) of the Internal Revenue Code	448.76
Total Penalties	$11,035.03

* Not applicable if taxpayer elects to take the Standard Deduction.

** If line 3 above included partially tax exempt interest see tax computation instruction.

(UNY #307)

Order of Hon. Sylvester J. Ryan dated June 19, 1953 on Defendant's Motion for Bill of Particulars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Order — C 141-9

[SAME TITLE]

The defendant having moved this Court for an order directing the United States Attorney to serve and file a bill of particulars in connection with the indictment herein and said motion having duly come on to be heard before Honorable Sylvester J. Ryan, United States District Judge, on June 1, 1953, and after hearing Joseph Leary Delaney, attorney for defendant, in support of the motion, and J. Edward Lumbard, United States Attorney for the Southern District of New York, by Lloyd F. MacMahon, Chief Assistant United States Attorney, attorney for United States of America, in opposition thereto,

Now on motion of J. Edward Lumbard, United States Attorney for the Southern District of New York, attorney for United States of America, it is

ORDERED that defendant's motion for a bill of particulars is hereby granted as to items designated in his notice of motion as "(a)", "(b)" and "(c)", and the United States Attorney is directed to serve and file a bill of particulars herein setting forth the following:

(a) A statement of which items in the tax returns filed by the defendant for the calendar years 1946 to 1949, inclusive, the United States Attorney claims are false;

Order of Hon. Sylvester J. Ryan dated June 19, 1953 on Defendant's Motion for Bill of Particulars

(b) A statement of whether the United States Attorney claims that the gross income during said calendar years was falsely reported and, if so, the amount the United States Attorney claims should have been reported as gross income;

(c) A statement of whether the United States Attorney will claim that any item of exemptions or expenses or deductions was falsely claimed during said calendar years and, if so, a statement as to each item that the United States Attorney claims was falsely claimed as an exemption, expense or deduction and the amount the United States Attorney will claim should have been reported as an exemption, expense or deduction; and it is further

ORDERED that the aforesaid bill of particulars be served and filed on or before 10 days after the entry of this order and that such particulars be granted only to the extent that they are known to the United States Attorney when the said bill of particulars shall be served, and it is further

ORDERED that defendant's motion for a bill of particulars is denied in all other respects.

Dated: New York, N. Y.,
June 19, 1953.

SYLVESTER J. RYAN
U. S. D. J.

Government's Bill of Particulars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The United States of America, for its Bill of Particulars, by J. Edward Lumbard, United States Attorney for the Southern District of New York, alleges, as follows:

AS TO THE FIRST COUNT:

(a) The items in the tax return filed by the defendant for the calendar year 1946, which the United States Attorney claims are false, to the extent that such items are now known to the United States Attorney, are, as follows:

Page 1 Line 3
Line 5
Line 6
Line 7
Line 10

Page 2 "Schedule E",
Line 3
Line 4

Page 3 "Deductions."
(see (c) below).

"Tax Computation",
Line 1
Line 3
Line 5
Line 6
Line 7
Line 8

(b) The United States Attorney claims that the gross income during the calendar year 1946 was falsely reported and further claims, to the extent that this particular is now known, that the amount which should have been reported as gross income is $49,346.69.

(c) The United States Attorney will not claim that any item of exemptions or expenses or deductions was falsely claimed during the calendar year 1946, to the extent that these particulars are now known. The United States Attorney alleges that in connection with the gross income which should have been reported for the calendar year 1946, an additional deduction of $6,340.70 will be allowed to the defendant, consisting of additional contributions in the amount of $1,358.85 and additional interest in the amount of $4,981.85.

AS TO THE SECOND COUNT:

(a) The items in the tax return filed by the defendant for the calendar year 1947, which the United States Attorney claims are false, to the extent that such items are now known to the United States Attorney, are, as follows:

Page 1 Line 3
Line 4
Line 5
Line 6
Line 7
Line 9
Line 10

Page 2 "Schedule E"
Line 3

Page 3 "Deductions"
(see (c) below).

"Tax Computation"
Line 1
Line 3
Line 5
Line 6
Line 7
Line 8

(b) The United States Attorney claims that the gross income during the calendar year 1947 was falsely reported and further claims, to the extent that this particular is now known, that the amount which should have been reported as gross income is $98,339.97.

(c) The United States Attorney will not claim that any item of exemptions or expenses or deductions was falsely claimed during the calendar year 1947, to the extent that these particulars are now known. The United States Attorney alleges that in connection with the gross income which should have been reported for the calendar year 1947, an additional deduction of $16,128.24 will be allowed to the defendant, consisting of additional contributions in the amount of $3,359.50 and additional interest in the amount of $12,768.74.

AS TO THE THIRD COUNT:

(a) The items in the tax return filed by the defendant for the calendar year 1948, which the United States Attorney claims are false, to the extent that such items are now known to the United States Attorney, are, as follows:

Page 1 Line 3
Line 4
Line 5
Line 6

Government's Bill of Particulars

Line 7
Line 9
Line 10

Page 2 "Schedule E"
Line 3
Line 4

Page 3 "Deductions"
(see (c) below)

"Tax Computation"
Line 1
Line 3
Line 5
Line 9
Line 10
Line 11
Line 12
Line 13

(b) The United States Attorney claims that the gross income during the calendar year 1948 was falsely reported and further claims, to the extent that this particular is now known, that the amount which should have been reported as gross income is $56,241.85.

(c) The United States Attorney will not claim that any item of exemptions or expenses or deductions was falsely claimed during the calendar year 1948, to the extent that these particulars are now known. The United States Attorney alleges that in connection with the gross income which should have been reported for the calendar year 1948, an additional deduction of $2,360.50 will be allowed to the defendant, consisting of additional contributions in the amount of $2,360.50.

Government's Bill of Particulars

As to the Fourth Count:

(a) The items in the tax return filed by the defendan for the calendar year 1949, which the United States Attor ney claims are false, to the extent that such items are now known to the United States Attorney, are, as follows:

Page 1 Line 3
Line 4
Line 5
Line 6
Line 7
Line 9
Line 10

Page 2 "Schedule E"
Line 3

Page 3 "Deductions"
(see (c) below)
"Tax Computation"
Line 1
Line 3
Line 5
Line 9
Line 10
Line 11
Line 12
Line 13

(b) The United States Attorney claims that the gross income during the calendar year 1949 was falsely reported and farther claims, to the extent that this particular is now known, that the amount which should have been reported as gross income is $69,974.19.

(c) The United States Attorney will not claim that any item of exemptions or expenses or deductions was

falsely claimed during the calendar year 1949, to the extent that these particulars are now known. The United States Attorney alleges that in connection with the gross income which should have been reported for the calendar year 1949 that an additional deduction of $996.57 will be allowed to the defendant, consisting of additional contributions in the amount of $837.00 and additional interest in the amount of $159.57.

Dated: New York, N. Y.,
June 29, 1953.

Respectfully submitted,

J. Edward Lumbard
United States Attorney for the
Southern District of New York,
Attorney for the United States of
America
Office and P. O. Address
United States Court House
Foley Square
Borough of Manhattan
City of New York

To:

Joseph Leary Delaney, Esq.
Attorney for Defendant
350 Fifth Avenue
New York, N. Y.

Notice of Motion for Further Bill of Particulars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Leo C. Fennelly, sworn to the 23rd day of November, 1953, the indictment and all proceedings had herein, the defendant will move this Court, at a term thereof for the hearing of motions in criminal causes, to be held in room 318, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 30th day of November, 1953, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order directing the United States Attorney to serve and file a further bill of particulars of the indictment setting forth the following as to each count:

1. The amount and sources of the "other income" which the Government claims the defendant received and did not report; the names of the persons or corporations from whom the defendant received the income, and the approximate time of the receipt thereof.

2. The amount of the dividends which the Government contends were received and unreported by the defendant, and the name of the corporation paying the dividend, and the approximate time received by the defendant.

3. The amount of interest it is claimed was received and not reported by the defendant; the name of the person

or corporation paying the interest; and the approximate time of the payment.

Dated, New York, November 24, 1953.

Yours, etc.,

/s/ LEO C. FENNELLY
Attorney for Defendant
Office and P. O. Address
48 Wall Street
New York 5, N. Y.

To:

HONORABLE J. EDWARD LUMBARD
United States Attorney
Southern District of New York

Affidavit of Leo C. Fennelly, Read in Support of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LEO C. FENNELLY, being duly sworn, says:

I am the attorney for the defendant, having been recently retained.

This affidavit is made in support of a motion for a further bill of particulars.

The indictment charges a wilful attempt to defeat and evade part of the defendant's income tax for the calendar years 1946 through 1949, in that the defendant had net income in each of these years in excess of the amount reported.

The bill of particulars ordered by this Court June 18, 1953 indicates that the defendant had dividends, interest and other income which it is claimed was not reported. The bill of particulars fails to specify the source or the amount of the other income, dividends and income.

I have been advised by the defendant that he has no information or knowledge as to the additional income or of any dividends or interest which were not reported in his income tax returns for the years involved and that as far as the defendant knows, all of his income for the years involved in the indictment have been reported.

It is impossible to prepare this case for trial or to prevent surprise upon the trial without knowing the

sources of the additional income, dividends and interest, the approximate time it is claimed that the defendant received the additional income. Without this information the defendant would be forced to proceed to trial without being properly prepared for the defense of the case and would be confronted for the first time with a series of items of alleged income with which he is not familiar.

WHEREFORE, I respectfully request this Court to grant an order directing the United States attorney to supply a further bill of particulars setting forth the information requested in the notice of motion.

(Sworn to by Leo C. Fennelly on November 23, 1953.)

Endorsement on Foregoing Moving Papers

Motion Denied—November 30, 1953

E. J. DIMOCK
U. S. D. J.

Affidavit of Lloyd F. MacMahon, Read in Opposition to Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

LLOYD F. MACMAHON, being duly sworn, deposes and says:

1. I am Chief Assistant United States Attorney for the Southern District of New York and am familiar with the facts and proceedings relating to this motion and the prosecution of the above-entitled matter. I make this affidavit in opposition to the motion of defendant Frank Costello for an order directing the United States Attorney to serve and file a further bill of particulars of the indictment herein.

2. On March 11, 1953, an indictment in 4 counts was filed against Frank Costello charging him with wilfully and knowingly attempting to defeat and evade a large part of his income tax for the calendar years 1946, 1947, 1948 and 1949 by filing false and fraudulent income tax returns. On April 23, 1953, the defendant Frank Costello entered a plea of not guilty to all counts of the indictment before Honorable John W. Clancy. On that day, following the entry of this plea, defendant, through his then counsel, Joseph Leary Delaney, Esq., applied to the Court for 30

days from the date of pleading within which to make motions with respect to the indictment. After argument, the Court granted 20 days. A photostatic copy of the official transcript of the proceedings before Judge Clancy on April 23, 1953 is hereto annexed as Exhibit A.

3. On May 13, 1953, within the 20 days granted by Judge Clancy for the making of motions, defendant Frank Costello made his original motion for an order directing the United States Attorney to serve and file a bill of particulars with respect to the indictment. The motion came on to be heard before Honorable Sylvester J. Ryan on June 1, 1953 and after argument Judge Ryan granted defendant's motion as to the items designated as "(a)", "(b)" and "(c)" in defendant's original notice of motion. Defendant's original motion was in all other respects denied. Judge Ryan's order was entered on June 19, 1953.

4. The particulars granted by Judge Ryan included a statement of the items in the tax returns filed by the defendant claimed to be false, the amounts of gross income which should have been reported, and a statement relating to exemptions, expenses or deductions falsely claimed by the defendant. In compliance with Judge Ryan's order, the Government served and filed its bill of particulars on June 29, 1953.

5. In the affidavit of Joseph Leary Delaney, sworn to May 13, 1953, submitted in support of the defendant's original motion for a bill of particulars, counsel stated that he had advised the defendant that it was essential for him to be advised * * * of the sources from which the United States Attorney claims he derived such other income, and of the approximate times and places the United States Attorney claims he received such alleged

additional income * * *." In its memorandum in opposition to defendant's original motion, the Government met defendant's argument with respect to source of income. Thus the merits of the demand made in defendant's second motion for a bill of particulars were before Judge Ryan when he denied defendant's original motion except as to items "(a)", "(b)" and "(c)".

WHEREFORE, your deponent respectfully prays that defendant's second motion for a bill of particulars be denied in all respects, both because it is not timely under the express provisions of Rule 7(f) of the Rules of Criminal Procedure, and the specific terms of Judge Clancy's order of April 23, 1953, and also because the substance of the items set forth in defendant's second notice of motion was raised by defendant before Judge Ryan on defendant's original motion for a bill of particulars.

(Sworn to by Lloyd F. MacMahon on November 30, 1953.)

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

[SAME TITLE]

Before:

HON. JOHN W. CLANCY, *D.J.*

For the Government:

LLOYD F. MACMAHON, ESQ., and
JOSEPH P. MARTIN, ESQ.

For the Defendant:

JOSEPH L. DELANEY, ESQ.

The Clerk: Have you had a copy of this?

Mr. Delaney: I have.

The Clerk: Four counts in this indictment, charging you with unlawfully and knowingly attempting to defeat and evade a large part of the income taxes due and owing by you to the United States for the calendar years, 1946, 1947, 1948 and 1949.

Do you plead guilty or not guilty?

The Defendant: Not guilty.

The Clerk: Not guilty.

(Mr. Delaney addressed the Court on behalf of the defendant.)

Mr. MacMahon: We recommend bail in the amount of $5,000.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

Mr. Delaney: I think that is reasonable, your Honor.

Mr. MacMahon: At this time, we move that the case be marked off the calendar.

Mr. Delaney: May I have thirty days in which to make motions with respect to the indictment?

(Discussion concerning date for filing of motions.)

The Court: I will give you twenty days.

(Marked off.)

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

/s/ Joe Cyrus
Official Court Reporter
U. S. District Court

Order to Show Cause to Produce Books, Papers, etc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the annexed affidavit of Lloyd F. MacMahon, Chief Assistant United States Attorney for the Southern District of New York, it is hereby

ORDERED that Michael J. Tanico, Phil Kastel and Charles B. Murphy, witnesses subpoenaed herein, show cause before this Court, if any they have, on the 4th day of February, 1954, at ten-thirty o'clock in the forenoon or as soon thereafter as counsel may be heard, in Room 318 of the United States Courthouse, Foley Square, Borough of Manhattan, City, State and Southern District of New York, why this Court should not enter an order under Rule 17(c) of the Federal Rules of Criminal Procedure, directing that the books, papers and documents designated in subpoenas duces tecum served upon the said witnesses, copies of which are annexed hereto, be produced before this Court at a time prior to trial, to wit, on the 11th day of February, 1954, at ten-thirty o'clock in the forenoon, and that said books, papers and documents may be inspected by the parties hereto and their attorneys.

Sufficient cause therefor appearing, let service of copies of this order by mailing the same by registered mail on or before the 23rd day of January, 1954, to the said witnesses Michael J. Tanico, Phil Kastel and Charles B. Murphy be deemed sufficient.

Dated: New York, N. Y., January 22nd, 1954.

I. R. KAUFMAN
U. S. D. J.

Affidavit of Lloyd F. MacMahon Read in Support of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
SOUTHERN DISTRICT OF NEW YORK

LLOYD F. MACMAHON, being duly sworn, deposes and says:

1. I am Chief Assistant United States Attorney for the Southern District of New York and am familiar with the facts and proceedings relating to this application and the prosecution of the above-entitled matter. I make this affidavit in support of the application of the United States of America for an order to show cause why this Court should not enter an order under Rule 17(c) of the Federal Rules of Criminal Procedure directing that the books, papers and documents designated in subpoenas duces tecum served upon Phil Kastel, Michael J. Tanico and Charles B. Murphy, copies of which are annexed hereto, be produced before this Court at a time prior to trial and that said books, papers and documents may thereafter be inspected by the parties hereto and their attorneys.

2. On March 11, 1953, an indictment in four counts was filed against Frank Costello, charging him with wilfully and knowingly attempting to defeat and evade a large part of his income tax for the calendar years 1946, 1947, 1948

and 1949 by filing false and fraudulent income tax returns. This case is set for trial on March 1, 1954.

3. On December 7, 1953, five subpoenas duces tecum were served upon Charles B. Murphy by the United States Marshal, New Orleans, Louisiana; five identical subpoenas duces tecum were similarly served on Michael J. Tanico on the same date, and on Phil Kastel on December 21, 1953. All of these subpoenas duces tecum call for the production of certain books, papers and documents on March 1, 1954. I am informed by Special Agent Claude Danneman that at various times in the past the books, papers and documents called for have been in the possession, custody or control of each of the witnesses upon whom the subpoenas have been served.

4. The books, papers and documents covered by these subpoenas duces tecum pertain to the business of concerns in which the defendant Frank Costello, or his wife Loretta B. Costello, now have or have had an interest, and from which they received income during the years covered by the indictment herein.

5. As more particularly appears from the copies of the subpoenas attached hereto, the books, papers and documents called for consist of accounting and other business records of complex transactions. It is necessary in the preparation of this case that attorneys and agents of the Government make detailed analyses of these records in advance of trial. Because of the complex nature of the records and the need for careful analysis, it is estimated that adequate examination would take approximately three weeks.

6. No previous application has been made for the relief herein sought.

Affidavit of Lloyd F. MacMahon

WHEREFORE, your deponent respectfully prays that the Court enter an order requiring Michael J. Tanico, Phil Kastel and Charles B. Murphy to appear in this Court on the 4th day of February, 1954, at ten-thirty o'clock in the forenoon of that day in Room 318 of the United States Courthouse, Foley Square, Borough of Manhattan, City, State and Southern District of New York, and show cause why this Court should not enter an order under Rule 17(c) of the Federal Rules of Criminal Procedure, directing that the books, papers and documents designated in subpoenas duces tecum served upon the said witnesses, copies of which are annexed hereto, be produced before this Court at a time prior to trial, to wit, on the 11th day of February, 1954, at ten-thirty o'clock in the forenoon, and that said books, papers and documents may be inspected by the parties hereto and their attorneys.

(Sworn to by Lloyd F. MacMahon on January 22nd, 1954)

Proof of Service

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 141-9

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

VICTORIANO S. RODRIGUEZ, being duly sworn, deposes and says that he is employed in the office of J. Edward Lumbard, United States Attorney for the Southern District of New York, attorney for the United States herein.

That on the 25th day of January, 1954, he did serve a true copy of the hereto annexed Order to Show Cause on the office of Leo C. Fennelly, Esq., attorney for the defendant Frank Costello herein, located at Borough of Manhattan, City of New York by leaving a true copy of the same with the person, Mary M. Whelan, in charge of said office, there being no one present who was authorized to give an admission of service.

VICTORIANO S. RODRIGUEZ

Sworn to before me this
26th day of January, 1954.

LAWRENCE U. COSTIGLIO
Notary Public, State of New York
Term expires March 30, 1955

Transcript of Proceedings Before Hon. John F. X. McGohey dated February 4, 1954

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 141-9

[SAME TITLE]

Before:

HON. JOHN F. X. MCGOHEY,

District Judge.

New York, February 4, 1954.

APPEARANCES:

JOHN EDWARD LUMBARD, ESQ.,
United States Attorney, for the Government; and
Lloyd F. McMahon, Esq.,
Powell Pierpoint, Esq., and
Whitney N. Seymour, Jr., Esq.,
Assistant United States Attorneys.

LEO C. FENNELLY, ESQ.,
Attorney for Defendant.

HILLARY J. GAUDIN, ESQ.,
Attorney for Witnesses Michael J. Tanico, Phil Kastel and Charles B. Murphy.

Mr. Solomon: May I introduce Mr. Hillary J. Gaudin, a former Assistant United States Attorney for Louisiana, from New Orleans, Louisiana, and a member of the Bar of the State of Louisiana, who represents Mr. Phil Kastel

and whom I know and who has asked me to move his admission for the purpose of arguing this motion. I present him to the Court.

The Court: We will be very glad to hear you.

Mr. McMahon: May the record show that Mr. Gaudin represents Mr. Kastel, Mr. Murphy and Mr. Tanico, the witnesses in the Government's order to show cause?

Mr. Horn: It will be called again. Second call:

The Court: In the Costello motion, is Mr. Fennelly here?

Mr. McMahon: He just stepped out.

The Court: How long do you think it will take to argue the motion?

Mr. McMahon: There are three motions, your Honor, and it is a little hard to tell. One motion involves witnesses under subpoena by the Government. One motion is for discovery by the defendant and the third motion is for an adjournment by the defendant.

The Court: How long do you think it will take, Mr. Fennelly, to argue those?

Mr. Fennelly: I would think I would only take probably 15 minutes on the two. The other motion is the Government's and I am not concerned with it.

I would think if you argued the Government's motion first it might save time and you would have the facts stated.

The Court: I think there is no sense of your waiting here and I do not think I could possibly get to them before 12 o'clock. I was just wondering about the motion that I have for 2.30, but it will work out all right. But you are excused now until 12 o'clock.

(Recess to 12.00 o'clock noon.)

Mr. McMahon: Your Honor, this is a motion under Rule 17(c) by the Government to have certain records of five

companies located in Louisiana produced. They have already been subpoenaed for the trial, and this is a motion to have them produced in advance of trial.

Mr. Gaudin from New Orleans has conferred with me about it this morning. He tells me that there is no opposition to the motion and they are willing to produce them. The only problem involved is the time when that must be done and the matter of the expense involved in shipping them up here and back to New Orleans. Is that correct, Mr. Gaudin?

Mr. Gaudin: That is correct.

Mr. McMahon: If I could suggest something on the time, I have been trying to work out a time with Mr. Gaudin but we are not able to get very specific about it. I might say that these subpoenas were originally served about one month in advance of December 7, when this case was originally on for trial. This order has been brought on by order to show cause ten days ago.

I understand from Mr. Gaudin that there are about 100 file cabinets, file drawers, these documents. I would suggest to your Honor that I think we can work something out here. It will take between a week and ten days to get them here; I understand it will take three days to ship them here by Railway Express and the cost would be $700. Perhaps we might be able to arrange with the marshal to send a Government truck down there. I don't know about that. I'll have to check on that.

Mr. Gaudin: May I address the Court? Your Honor, I wish to offer an apology to the Court for having been in the corridor at the time when I was talking with Mr. Solomon. I did not know that the Court wished for me to remain in the courtroom. I was talking to Mr. Solomon on another matter.

The Court: That is all right.

Transcript of Proceedings Before Hon. John F. X. McGohey dated February 4, 1954

Mr. Gaudin: Your Honor, the situation briefly is this: The Government has requested that the records of the Louisiana Mint Company (all partnerships); Beverley Country Club (all partnerships); Beverley Country Club, Incorporated; Crescent Music Company (all partnerships); and Crescent Music Company, Incorporated.

I have personally viewed these records which the Government requests. There is no objection whatsoever on the part of my clients, Mr. Kastel, Mr. Murphy, and Mr. Tanico, to have these particular records sent up to this Court. The records are down presently in the jurisdiction of the Eastern District of Louisiana. We are somewhat distant from New York, maybe 1000 or 1200 miles. These records are rather voluminous. I would estimate, roughly, that there are approximately a hundred file drawers, which will entail approximately 60 pounds to the drawer, some 6000 pounds, roughly.

Now we have no objection to having these records sent from New Orleans up to New York under the two rules, under the Civil Rules and Criminal Rules, but, of course, we expect the Government to defray the expenses of these records and of having them shipped from New Orleans up to New York and again back to New Orleans. We are most anxious to have these records back in New Orleans in the same fashion that we shipped them up to New York, for the reason that there will be a tax case—

The Court: In the same order that they are sent up?

Mr. Gaudin: That is correct, your Honor.

The Court: That is something for you to work out.

Mr. Gaudin: Yes. I would like to point out to the Court that these records are extremely voluminous as far as packing them up and shipping them up here—

The Court: It is only a matter of how much and who is going to pay it?

Transcript of Proceedings Before Hon. John F. X. McGohey dated February 4, 1954

Mr. Gaudin: Yes, and there is a time element also, your Honor, and the mode or medium of transportation.

In other words, we are willing to ship at the Government's expense, any way that your Honor so orders.

The Court: The matter of shipment is something that can be worked out agreeable to you and it really comes to this: If the expense is taken care of, all other problems can be solved.

Mr. Gaudin: That is right, with the exception of one thing, your Honor, and I feel confident that Mr. McMahon and Mr. Pierpoint of the United States Attorney's Office recognize that these records have been examined by Government agents for approximately three years to my knowledge.

The question now is that to just arbitrarily pick them up and shove them to New York is not feasible nor advisable, in my opinion. We would have no definite record.

Mr. McMahon suggests that the Government have an agent check and table with the employees of these various companies, which again we have no objection to.

Now I would say, and I have talked with Mr. McMahon, I do not feel that I can possibly get into this until I get back, and I contemplate leaving tonight but there is a possibility that I may lay over until tomorrow, which would mean that I would not be back in New Orleans, Louisiana,—I would be back, of course, before Monday. But I could not possibly get to work on these things before Monday, and I feel confident that the Government could not have an agent there before that time.

Now we are willing and we are ready and we want the Government to have all these records, and we want the Government to have these records in the same fashion that they want them, tabbed and tabled, and likewise we want these records sent back to us in the same fashion.

Transcript of Proceedings Before Hon. John F. X. McGohey dated February 4, 1954

Mr. McMahon: The case is at present on the trial calendar for March 1st. We would need a reasonable time in advance of that trial to examine the records. I assume about ten days to two weeks.

The Court: I take it counsel's position is that as soon as it is feasible to get them here and the proper indexing, or whatever it is—

Mr. Gaudin: That is right.

The Court: So that is a matter that could be worked out. It only comes down to the question of who is going to pay the bill. That is the real point here.

Mr. Gaudin: Would you like me to point out these two rules, your Honor?

The Court: No. I will have to look at them, unless you can make some agreement on that. The way everybody avoids that. I take it there is not going to be any agreement.

Mr. Gaudin: Let me say this. Let me call this to the Court's attention. Your Honor, some of these companies are no longer in existence to just arbitrarily say that somebody has to pay for them, the Government actually wants them. Under the Civil Rule, and I will read that rule which I am sure your Honor recognizes, and then when we read the rule under the Criminal Section, this is to be construed—

The Court: Which rule are you referring to?

Mr. Gaudin: I am reading now on page 31 of the Rules of Criminal Procedure.

The Court: What rule is it?

Mr. Gaudin: That is Rule 17(c), which says that this rule is substantially the same as Rule 45(b) of the Federal Rules of Civil Procedure. I call your Honor's attention to that rule.

The Court: What you read I guess is from one of the notes?

Transcript of Proceedings Before Hon. John F. X. McGohey dated February 4, 1954

Mr. Gaudin: That is right, your Honor, at the bottom of page 31.

And then it goes on to state that a conditioned denial of the motion, where a motion to quash would be filed, where the request was unreasonable and oppressive. That is not our position. We filed no motion. It says further upon the advancement by the person in whose behalf the subpoena is issued, the reasonable cost of producing books, papers or documents.

The Court: Well, all right. I will take the papers.

What is your next motion?

The Clerk: Frank Costello, order to show cause.

Mr. Gaudin: May I just ask the Court one question?

The Court: Yes.

Mr. Gaudin: In other words, on our particular motion, I think your Honor recognizes the fact that I have come all the way from New Orleans to inform this Court that these records are available, and so forth, and that we want to comply with every request of this Court, and if in your Honor's judgment, sagaciousness and wisdom, we would like an order from your Honor delegating the mode of transportation, and so forth and so on. I would appreciate to have that in the order so I can comply and my clients can comply with your Honor's order.

The Court: Very well.

Mr. Fennelly: • • •

Order to Show Cause for Inspection of Grand Jury Minutes

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the annexed affidavit of Frank Costello sworn to February 19, 1954,

Let the United States of America, by the United States Attorney for the Southern District of New York, show cause at a Criminal Term of this Court to be held in Room 318, United States Court House, Foley Square, Borough of Manhattan, City of New York at 10:30 A.M. on the 23rd day of February, 1954 or as soon thereafter as counsel can be heard directing that the Minutes of the Grand Jury returning the indictment herein be examined and the indictment dismissed on the ground that there was no lawful evidence before the Grand Jury upon which the indictment can be predicated, and for such other and further relief as to the Court may seem just and proper.

Service of a copy of this order, and the papers on which it is granted, on the United States Attorney for the Southern District of New York on or before 3:30 o'clock P.M. on February 19th 1954, shall be sufficient service thereof.

s/ EDWARD WEINFELD
U. S. D. J.

Dated: New York, N. Y.
February 19th, 1954.

Affidavit of Frank Costello, Read in Support of Motion for Inspection of Grand Jury Minutes

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

FRANK COSTELLO, being duly sworn, deposes and says:

That he is the defendant above named and makes this affidavit in support of a motion for an order permitting inspection of the minutes of the Grand Jury which returned the indictment herein.

The indictment contains four counts charging income tax evasion for the calendar years 1946 to 1949, inclusive; that your deponent heretofore pleaded not guilty to said indictment.

For each of the calendar years referred to in the indictment, your deponent filed Federal Income Tax Returns which truly and accurately reflect all of his income for the said years and your deponent paid in full all taxes due thereon. In view of the fact that your deponent has reported all of his income for said years, your deponent is firmly convinced that there could be no legal or competent evidence before the Grand Jury which would justify the indictment.

Your deponent has been advised by his attorneys that in recent years, in order to establish tax evasion, the Government on occasions has resorted to the use of the so-called "net worth-expenditure" theory, which requires proof of the issuance of a net worth statement. To the

best of your deponent's knowledge and belief, he never issued a financial or net worth statement and consequently, no net worth statement of your deponent could have been proved before the Grand Jury which indicted him.

Since there could have been no evidence before the Grand Jury of income other than that reported in the returns for the years referred to in the indictment and since there could have been no proof of a net worth statement issued by deponent, the indictment, of necessity, must have been based upon no evidence at all or upon wholly incompetent and illegal evidence; and an inspection of the minutes of the Grand Jury must reveal such facts.

No previous application has been made for like relief herein.

The reason why this application is brought on by Order to Show Cause is that the case has been set for trial for April 5, 1954 and considerable time will be needed for the preparation of appropriate motions based upon the disclosures made from an inspection of the Grand Jury minutes.

WHEREFORE, your deponent respectfully asks for an order providing for the inspection of the minutes of the Grand Jury which returned the indictment and for a dismissal of the indictment.

(Sworn to by Frank Costello on February 19, 1954.)

Opinion of Hon. Edward Weinfeld, Denying Motion to Inspect Grand Jury Minutes

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

EDWARD WEINFELD, *D. J.*

The defendant moves for an inspection of the grand jury minutes on the ground that there was no competent evidence before the grand jury upon which the indictment could be predicated. The motion is supported by his affidavit wherein he asserts (1) that he paid in full all income taxes due for the years set forth in the several counts of the indictment; and (2) that to the best of his knowledge he never issued a financial or net worth statement upon which the grand jury could legally base an indictment.

The first ground adds nothing to his plea of not guilty; the second partakes of an allegation made upon information and belief as to what transpired before the grand jury. The presumption, of course, is that the indictment was founded on competent evidence and there is nothing to show to the contrary. United States v. Weber, 197 F. 2d 237. Neither is there any showing nor contention that irregularities occurred before the grand jury. Cf. United States v. Remington, 191 F. 2d 246.

The power of the Court to inspect or permit an inspection of the grand jury minutes should rarely be exercised. United States v. Garsson, 291 Fed. 646; United States v. Brothman, 93 F. Supp. 368, 371. The affidavit submitted on the present application is devoid of any facts to compel the conclusion that this is one of those rare cases in which

Opinion of Hon. Edward Weinfeld, Denying Motion to Inspect Grand Jury Minutes

the Court should exercise its discretionary power. "A mere request to inspect the minutes, without any statement of facts indicating insufficiency of the evidence, is not enough to require the court to inspect the minutes." United States v. Weber, supra.

The motion is denied.

Dated: February 25th, 1954.

EDWARD WEINFELD
United States District Judge

Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C. 141-9.

[SAME TITLE]

Before:

HON. JOHN F. X. McGOHEY,
D. J., and a Jury.

New York, April 5, 1954;
11.00 o'clock a. m.

Appearances:

J. EDWARD LUMBARD, ESQ.,
United States Attorney, and
LLOYD F. MACMAHON, ESQ.,
POWELL PIERPOINT, ESQ.,
WHITNEY N. SEYMOUR, JR., ESQ., and
ARTHUR H. CHRISTY, ESQ.,
Assistant United States Attorneys,
for the Government.

LEO C. FENNELLY, ESQ., and
JOSEPH LEARY DELANEY, ESQ.,
Attorneys for Defendant.

* * * * *

(2) The Court: Is the case ready?

Mr. MacMahon: The Government is ready, your Honor.

Mr. Fennelly: The defendant is not ready, your Honor. We have been unable to adequately prepare for the defense—

The Court: I don't hear you, Mr. Fennelly.

Mr. Fennelly: —because of the lack of a bill of particulars.

The Court: I didn't hear you.

Mr. Fennelly: I say, the defendant is not ready because we have been unable to properly prepare for trial because of an inadequate bill of particulars in this case. We ask that further bill of particulars be filed as we have requested and that we be given appropriate times thereafter to prepare.

The Court: Well, it is not quite clear to me just what your position is. The motion was made, was it not?

Mr. Fennelly: It was made and denied, your Honor. I am making my application for the record. Your Honor set this case down peremptorily for today some time ago.

The Court: Yes, I did.

Mr. Fennelly: And our application for a further (3) bill of particulars has been denied, and I am renewing that application for one before you now and for time—

The Court: Do you desire to be heard?

Oh, I beg your pardon.

Mr. Fennelly: And for time to prepare thereafter.

The Court: Does the Government desire to be heard?

Mr. MacMahon: Simply to say, your Honor, that a motion was made nearly a year ago for a bill of particulars before Judge Ryan. It was granted in part and denied in part. And in so far as it was granted, the Government has fully complied with it. A subsequent motion made by

Mr. Fennelly was denied completely by Judge Dimock. And I am certain that from many affidavits filed by both Mr. Delaney and Mr. Fennelly that anything that takes place here today on this trial will come as no surprise.

The Court: The application for the further bill of particulars is denied. The application for further time is denied.

Are you ready now to call a jury?

The Clerk: Whenever you are ready, Judge.

The Court: Is the jury panel in the room?

The Clerk: No, they haven't been called yet.

The Court: Do counsel desire to take any (4) matters up with the Court before the jury is impaneled in connection with matters which may arise on the voir dire?

Mr. MacMahon: The Government has a list of questions to submit, your Honor (handing).

Mr. Fennelly: Is your Honor going to allow counsel to examine on the voir dire?

The Court: Why I normally do, within limits. But if you have some questions that you would like to propose I should like to see what they are first. As a rule, I do not restrict counsel too much.

(Mr. Fennelly hands to the Court.)

(A pause.)

The Court: I think, gentlemen, that you may make your own inquiries along the lines indicated in the sets of questions that you have referred to me.

I have suggested the elimination of one question that defense counsel has asked, question No. 30. I think I could not accept that because it incorrectly states what I under-

stand to be the law on that point. I have indicated an amendment to one of the questions the Government has submitted.

You may send for a panel.

Mr. Fennelly: Excuse me, your Honor. I have (5) one other matter I might take up now.

I had made an application which Judge Goddard granted on Friday to take written interrogatories of a witness. And while an order was endorsed on the back of the papers I would find it necessary to have a formal order designating someone to take the interrogatories. I have served the prosecutor this morning and Judge Goddard directed that both of us proceed with all speed on the matter to get these interrogatories back. I have also served my interrogatories on the prosecutor this morning and will now ask him to consent to the order so that we will not be held up.

Mr. MacMahon. These were served on me sitting here at counsel table and I haven't yet had an opportunity even to read them. If the order is satisfactory and the interrogatories are proper I will take the occasion to read them at the first opportunity that we get this morning.

The Court: Well, it will apparently take a bit of time to get a panel of jurors up here and you might take a look at it in the interim, and if that is adequate you can do what you think is necessary with respect to what is submitted to you, and if it isn't you may ask for additional time.

Mr. MacMahon: Thank you.

(6) Mr. Fennelly: I am only interested in the order at this time. I am not asking you to serve the interrogatories—

Mr. MacMahon: Your Honor, I noticed—

The Court: I can't comment on that. There is a paper been handed to the assistant United States attorney which

the Court has seen and on which counsel for the defendant has expressed some views. I don't intend to comment on them. I merely suggest that the assistant U. S. attorney look at them and if in the time available he can make his decision on it that he do so, and in the meantime I will take a short recess at this time while we are getting a panel of jurors up here. And you go ahead and look at the papers.

(Recess.)

The Court: Now gentlemen you may continue your inquiries after lunch.

We will adjourn now until 2.15.

The Clerk: Court is adjourned until 2.15.

---

(7) Afternoon Session

(Jury duly impaneled and sworn.)

(Three alternate jurors impaneled and sworn.)

* * * * *

(8) (Adjourned to April 6, 1954, at 10.30 a.m.)

* * * * *

William N. Murphey—for Government—Direct

(9) New York, April 6, 1954,
10.30 a.m.

(30) WILLIAM N. MURPHEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Will you state your name, Mr. Murphey? A. William N. Murphey.

Q. What do you do, Mr. Murphey? A. I am assistant chief of the accounting branch of the Upper Manhattan Internal Revenue Bureau.

Q. What geographical area does the Upper Manhattan District embrace? A. That embraces all of Manhattan north of 34th Street.

Q. Would that include the area for the address of 115 Central Park West and 241 Central Park West? A. Yes, sir, it does.

Q. Are you familiar with the books and records and the processing of the income tax returns in the Upper Manhattan District? A. Yes, sir, I am.

(Marked Government's Exhibit 1 for identification.)

Q. I show you Government's Exhibit 1 for identification and ask you if you can tell me what that is. A. This is the 1949 Federal income tax return, (31) Form 1040, joint return, filed by Frank and Loretta B. Costello, 115 Central Park West, New York 23, New York. It was filed at the

Upper Manhattan District. I have located the return from my index records.

The Court: What is the year?
The Witness: 1949.

(Marked Government's Exhibit 2 for identification.)

Q. I show you Government's Exhibit 2 for identification and ask you to tell me what that is. A. This is the 1948 Federal income tax return, Form 1040, filed by Frank and Loretta B. Costello, a joint return, 115 Central Park West, New York 25. Was received in the Upper Manhattan District, and I have located this return from my index records.

(Marked Government's Exhibit 3 for identification.)

Q. I show you Government's Exhibit 3 for identification and ask you to tell me what that is. A. This is the 1947 income tax return, Form 1040, filed by Frank and Loretta B. Costello, 115 Central Park West, received in the Upper Manhattan District on March 9, 1948.

(Marked Government's Exhibit 4 for identification.)

Q. I show you Government's Exhibit 4 for identification and ask you to tell me what that is. A. This is the 1946 Federal income tax return, (32) Form 1040, filed by Frank Costello as an individual, 115 Central Park West, New York, received in the Upper Manhattan District March 14, 1947.

William N. Murphey—for Government—Direct

(Marked Government's Exhibit 5 for identification.)

Q. I show you Government's Exhibit 5 for identification and ask you to tell me what that is. A. This is the 1946 Federal income tax return, Form 1040, filed by Loretta B. Costello, 115 Central Park West, New York, received in the Upper Manhattan District on March 14, 1947.

(Marked Government's Exhibit 6 for identification.)

Q. I show you Government's Exhibit 6 for identification and ask you to tell the Court and jury what that is. A. This is the 1945 Federal income tax return, Form 1040, filed by Frank Costello as an individual, 115 Central Park West, New York City, received Upper Manhattan District March 7, 1946.

(Marked Government's Exhibit 7 for identification.)

Q. I show you Government's Exhibit 7 for identification and ask you to tell the Court and jury what that is. A. This is the 1945 Federal income tax return, Form 1040, filed by Loretta B. Costello, 115 Central Park West, New York, received in the Upper Manhattan District February 28, 1946.

(Marked Government's Exhibit 8 for identification.)

(33) Q. I show you Government's Exhibit 8 for identification and ask you to tell me what that is. A. This is the 1944

William N. Murphey—for Government—Direct

Federal income tax return, Form 1040, of Frank Costello, filed as an individual, 115 Central Park West, New York City, received in Upper Manhattan March 15, 1945.

(Marked Government's Exhibit 9 for identification.)

Q. I show you Government's Exhibit 9 for identification and ask you to tell the Court and jury what it is. A. This is 1944 Federal income tax return, Form 1040, of Loretta B. Costello, filed individually, 115 Central Park West, New York City, received in the Upper Manhattan District March 15, 1945.

(Marked Government's Exhibit 10 for identification.)

Q. I show you Government's Exhibit 10 for identification and ask you to tell the Court and jury what it is. A. This is the 1943 Federal income tax return, Form 1040, filed jointly by Frank and Loretta B. Costello, 115 Central Park West, New York, received in the Upper Manhattan District February 15, 1944.

(Marked Government's Exhibit 11 for identification.)

The Court: You say this was 1943?
The Witness: '43, sir, that is right.

Q. I show you Government's Exhibit 11 for identification. Would you tell us what it is. (34) A. This is 1942 Federal income tax return, Form 1040, filed by Frank Costello, 115 Central Park West. It was received in the Upper Manhattan District March 11, 1943.

William N. Murphey—for Government—Direct

(Marked Government's Exhibit 12 for identification.)

Q. I show you Government's Exhibit 12 for identification and ask you if you will tell me what that is. A. This is 1941 individual income tax return, Form 1040, filed by Frank Costello, 115 Central Park West. Received March 13, 1942 in the Internal Revenue District.

Mr. MacMahon: Your Honor, the Government offers Government's Exhibits 1 to 12 for identification in evidence.

Mr. Fennelly: I have no objection, your Honor, to Exhibits 1 to 5, which cover years 19--

The Court: Years named in the indictment.

Mr. Fennelly: That is right—excuse me. 1 to 4, because 1945 is an income tax return of Loretta Costello individually and she is not a defendant here. So it is 1 to 4 that I have no objection to; and the others I object to as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 1 to 12 for identification received in evidence.)

Q. Have you made a search of your files in the Upper Manhattan District for income tax returns of (34-A) Frank or Loretta B. Costello for years prior to 1941? A. Yes, sir, I have.

Q. What have you determined in respect of those? A. Original returns for those periods prior to 1941—in fact, all the Federal income tax returns for years prior to 1941 have been officially destroyed.

(35) Q. Have you determined from records in the office whether Frank or Loretta B. Costello filed income tax re-

turns for the years 1937, 1938, 1939 and 1940? A. The records show that Frank Costello filed for those years; we have no record of Loretta Costello.

(Marked Government's Exhibit 13 for identification.)

Mr. MacMahon: Your Honor, at this time I offer a certified copy of the individual income tax return of Frank Costello, 115 Central Park West, New York, N. Y., for the calendar year 1938, marked as Government Exhibit 13 for identification.

Mr. Fennelly: I would object to this, your Honor, on the ground that it would appear from the testimony of this witness that no one could certify a copy when he said they had been destroyed.

Mr. MacMahon: Your Honor, the certification was made when the original was in existence.

The Court: Let me see the date of it.

(Mr. MacMahon hands to the Court.)

The Court: When were the records, filed in 1941, or for the years prior to 1941, destroyed, if you know?

The Witness: They were destroyed by—

The Court: No. I say when.

Mr. Fennelly: I am sorry. I can't hear the (36) witness, your Honor.

The Court: I understand that. I have difficulty, too.

Keep your voice up, too, please, Mr. Murphey.

The Witness: Yes. They were destroyed officially by the Internal Revenue Bureau in Washington, sir.

The Court: No. I say when.

The Witness: We don't have the exact date on which they were destroyed.

The Court: Well, I will overrule the objection. This bears the certification as of March 26, 1940, and the seal of the department. I will accept it.

(Government's Exhibit 13 for identification received in evidence.)

(Marked Government's Exhibit 14 for identification.)

Mr. MacMahon: At this time, your Honor, I offer a certified copy of the tentative and completed individual income tax returns filed by Frank Costello, 115 Central Park West, New York, N. Y., for the calendar year 1937 and schedules attached.

Mr. Fennelly: The same objection, your Honor, as to all of these prior to 1946, and also as to any notations that may appear on the return. For instance, one on the face of the certification.

(37) The Court: Let me see it.

(Paper handed to the Court.)

Mr. MacMahon: We will block that out, your Honor.

The Court: You are offering only so much of it as—that is, you are not offering that part of it which contains this challenged matter?

Mr. MacMahon: That is right.

The Court: You represent that that will be blocked out before it is exhibited to the jury?

Mr. MacMahon: Yes.

The Court: And that at no time will anything in there be commented on.

Objection overruled and the exhibit is received.

Mr. MacMahon: May we staple it, your Honor, at this time, so as to block out that?

The Court: I suggest that you ought to paste it over with some fairly opaque substance.

Mr. Fennelly: Your Honor, I also object on all of the returns to any notations that may have been put on there by the Department of Internal Revenue.

The Court: I assume that those are not—any notations are not offered.

Mr. MacMahon: That is right, your Honor.

The Court: Very well.

(38) (Government's Exhibit 14 for identification received in evidence.)

(Marked Government's Exhibit 15 for identification.)

Mr. MacMahon: Your Honor, at this time I offer a certified copy of the tentative and completed individual income tax returns filed by Frank Costello, 241 Central Park West, New York, N. Y., for the calendar year 1936 and attached schedule.

The Court: So that there will be no doubt about the extent of the offer, you are offering only the document itself and its contents, but not any notation made by any agent, or any other markings which might be on the face of the certification sheet?

Mr. MacMahon: That is right, your Honor.

The Court: Very well.

Mr. Fennelly: I object to this, your Honor, the year 1936, prior to the indictment years, and even prior to the years where the prosecution says is their starting point, immaterial and irrelevant.

The Court: I will hear you on that because it is prior to 1937.

Mr. MacMahon: Your Honor, I will connect it with the starting point of 1937. It is necessary for that. May I offer it subject to that connection?

(39) The Court: Do you intend to call this witness later?

Mr. MacMahon: No.

The Court: All right, now. I will receive it with that representation.

(Government's Exhibit 15 for identification received in evidence.)

The Court: But it is not to be exhibited in any way or commented on to the jury until the connection is made. And I will entertain a motion at any time later on, Mr. Fennelly, if you think that it is not—at the time it comes to be offered, if you think the foundation has not properly been laid, to object to it again, or move to strike it, rather.

Mr. MacMahon: Your Honor, at this time I offer Government's Exhibit 16 for identification, which is a certified copy of the New York State Income Tax Resident return for the year 1940, filed by Frank Costello, 115 Central Park West, New York, N. Y.

Mr. Fennelly: The same objection, your Honor; prior to the indictment years.

The Court: Overruled.

(Government's Exhibit 16 for identification received in evidence.)

Mr. MacMahon: I offer at this time Government's (40) Exhibit 17 for identification, which is a certified

copy of the 1939 New York State income tax return filed by Frank Costello, 115 Central Park West.

Mr. Fennelly: The same objection, and also, of course, to the notations on all of these:

The Court: Yes. I understand, with respect to all of the exhibits, the notations, or whatever they be, are excluded from the offer.

Mr. MacMahon: Yes, your Honor.

(Government's Exhibit 17 for identification received in evidence.)

(41) Mr. MacMahon: Your Honor, at this time I would like to show the jury Exhibits 1 through 12, which are the income tax returns of Frank and Loretta B. Costello for the years 1937 through 1949, together with Exhibits 16 and 17.

The Court: Wait a minute. 1 to 12?

Mr. MacMahon: No, your Honor. 1 to 14, your Honor, and 16 and 17, which are the income tax returns of either Frank or Loretta Costello or their joint returns for the years 1937 through 1949.

The Court: 1 to 14, 16 and 17?

Mr. MacMahon: That is right, your Honor.

Mr. Fennelly: I assume that before they do that that they will remove all notations on the returns.

The Court: Let me see what these notations are. These are all original records, are they, or photostats of original records?

The Witness: That is right.

(Mr. MacMahon hands exhibits to the Court.)

The Court: I am looking now at Exhibit 1 and the only notations I see there, if "notations" properly describes what I see, are check marks, some

made in red and some made in blue, alongside of various items, and at one place a circle around a figure of a thousand dollars.

(42) Are those what you had in mind, Mr. Fennelly?

Mr. Fennelly: Any notations that were made—

The Court: Will you take Exhibit 1, for instance, so we may see what it is—

Mr. Clerk, will you hand that to Mr. Fennelly? Let us see what it is that you ask to be removed from the exhibit.

(The Clerk hands exhibit to Mr. Fennelly.)

Mr. Fennelly: I don't see anything on that one, your Honor.

The Court: Very well.

Mr. Fennelly: I haven't examined each and every one of these. The reason I am making a general objection—I mean, I don't remember as I went through them—

The Court: I suggest now that you look at each one of them because general objections only get us into general difficulties. Suppose you take a look and see what you want eliminated.

Mr. Fennelly: May I look at them?

The Court: It would appear to me there would be nothing objectionable in any of those check marks that appear on the first exhibit.

Mr. Fennelly: I, unhappily, haven't had an opportunity to see these returns before.

(43) The Court: Now you have made that abundantly clear; and if there is anybody around who isn't aware of that, you are taking good care that they don't forget it, but that's quite all right.

Suppose you take them now and let us look at No. 1? After all, the jury can only—these jurors can only—look at one exhibit at a time. Suppose you start with that form now and let it go around.

(Mr. MacMahon hands exhibit to the foreman.)

(A pause.)

(Mr. MacMahon hands exhibits to the jury.)

The Court: Did you read them all, now, Mr. Fennelly?

Mr. Fennelly: Yes.

The Court: I take it there are no objectionable comments or notes of any kind.

Mr. Fennelly: That is right, with the exception of the one that has been blocked off.

The Court: Oh, yes. Well, that is blocked out. But I mean, of those that are visible, you have no objection.

The jury understands that on one of those, on the certification sheet, there is a piece of paper blocking out something which appears on the sheet, and that is not before you, and you must not attempt to find out what (44) it is because I tell you now it has nothing whatever to do with this case.

(A pause.)

The Court: All right. Now we will take our luncheon adjournment, but remember the instruction I gave you yesterday, ladies and gentlemen: Don't talk about the case to anybody, certainly not among yourselves, keep your minds completely open

until such time as all the evidence is in and the case is submitted to you, if it is, under the Court's instructions.

(Recess to 2:15 p.m.)

---

(45) Afternoon Session

William N. Murphey, resumed.

Direct Examination by Mr. MacMahon (Continued):

Q. Mr. Murphey, are records kept in the other Manhattan district which show whether income tax returns have been filed? A. Yes, sir.

The Court: I didn't hear the answer.
The Witness: Yes, sir.

Q. And did you examine those records to determine whether Loretta B. Costello filed any Federal income tax returns for the years 1937 through 1942? A. Yes, sir, I did.

Q. And what did you find? A. I find no record of a return—

Mr. Fennelly: Excuse me.

A. (Continuing) —ever having been filed for those years.

Mr. Fennelly: I would think this were hearsay, your Honor, and that the records be examined were the best evidence.

The Court: Overruled.

What were the years?

Mr. MacMahon: 1937 through 1942, your Honor.

(Government's Exhibits 18 and 19 marked for (46) identification.)

Q. I show you Government's Exhibit 18 for identification. Would you tell the Court and jury what it is? A. This is the 1950 return, Form 1040. It is a joint return filed by Frank and Loretta B. Costello, 115 Central Park West, received in the Upper Manhattan District on June 8, 1951.

The Court: May I see it a minute, please?

The Witness: Yes, sir. (Handing.)

Q. I show you Government's Exhibit 19 for identification and ask you to tell the Court and jury what that is. A. This is the 1952 Federal income tax return for Frank and Loretta B. Costello, 115 Central Park West, New York 23. It was filed in the Upper Manhattan District December 23, 1953.

Mr. MacMahon: At this time, your Honor, I offer Government's Exhibits 18 and 19 for identification, subject to connection.

Mr. Fennelly: I object to them as irrelevant and immaterial, being after the last indictment year, and particularly as to item—Exhibit 19, "D" your Honor will notice a paper attached to it which is incompetent, irrelevant and immaterial.

The Court: Well, I don't know as to that paper. That might be. But it does strike me, Mr. MacMahon, (47) that perhaps the connection ought to be made before these are admitted. I think the rela-

tion between these and this case is not quite as clear as—what was it—14 and 15.

Mr. MacMahon: Your Honor, there are admissions in them which relate to investments made during the prosecution period.

The Court: Well, you have identified them now as records from the files of the revenue department, and you offered them subject to connection. I suggest that it might be a little better if you wait until the connection is more apparent and offer them at that time, and that is all you have to do since they have been identified.

Mr. MacMahon: All right, sir.

(48) The Court: I will not receive them now but you have leave to reoffer them later.

Mr. MacMahon: Thank you, your Honor.

Q. Mr. Murphey, are records kept in the office of the Upper Manhattan District showing payments of income taxes by taxpayers? A. Yes, sir, they are.

(Marked Government's Exhibit 20 for identification.)

Q. I show you Government's Exhibit 20 for identification, Mr. Murphey, and ask you to tell me what it is. A. These are photostatic copies of assessment lists which are kept in the office of the District Director for the Internal Revenue District of Upper Manhattan. They record assessments and payments applied thereto of various taxpayers, and the names of taxpayers not concerned in this matter have been blacked out in accordance with regulations.

These payments listed for Frank and Loretta B. Costello include all payments from October 18, 1937 to December 31, 1949 through the District Director at Upper Manhattan.

The Court: From 1937 through to 1949?

The Witness: Yes, sir.

The Court: Through 1949?

The Witness: That is right, through December 31, 1949.

(49) Mr. MacMahon: At this time I offer Government's Exhibit 20 for identification in evidence.

(A pause.)

Mr. Fennelly: I object to it, your Honor, as irrelevant and immaterial and incompetent in that it contains information in addition to the payment of taxes. There are items in here going back to 1934.

The Court: I don't hear you.

Mr. Fennelly: I say, there are items in here going back to 1934. There are other notations as to assessments, and it is not solely as to the amount of taxes paid, and I would suggest, if your Honor would look at it, I should be glad to go over the items.

Mr. MacMahon: I might modify my offer at this time only to include—just for identification, and we plan to submit a schedule of payments at this time. I may wish to offer it later in other connections.

Mr. Fennelly: If it is going to be offered, I want this witness called back for the purpose of cross examination. To me it is obviously incompetent on the face of it, and if your Honor will look at it—

The Court: I am not going to look at it now if I am going to have to look at it later.

These are records kept in the regular course of the business of your office up there, are they?

(50) The Witness: Yes, sir.

The Court: And it is the regular course of the business of the office to keep records of this kind?

The Witness: That is right, accounting records.

The Court: Yes.

I don't know what it is you want to offer at this time, merely the offer of payments?

Mr. MacMahon: Payments at this time, your Honor.

The Court: That is, payments that are shown on these records?

Mr. MacMahon: That is right. We have a schedule prepared.

The Court: It seems to me you might be able to agree on that, might you not?

Mr. MacMahon: The next—

Mr. Fennelly: I would think they may be able to take out of there the items that constitute payments as shown by that record.

The Court: It would seem to me that you could agree on the payments as shown on the records, that is, stipulate that.

Mr. MacMahon: We have a schedule. It will take only a minute to put it in.

(51) Mr. Fennelly: It will take me more than a minute because I want to sit down and go over it to satisfy myself about the payments. I haven't seen this before. To look at it, it constitutes a pretty strange—

The Court: You are doing all right.

Mr. Fennelly: Strange, at least as far as I am concerned.

The Court: Here it is.

Mr. Fennelly: Because I find the year 1934, and the witness testified 1937.

The Court: I understood Mr. MacMahon to say that he was modifying his offer now so as to confine it to the years 1937 through 1949. Am I wrong about that?

Mr. MacMahon: That is correct.

The Court: And the whole purpose is to put in now proof of what payments the records of the Department show were received in that period from the defendant.

Mr. MacMahon: Precisely. On an annual basis.

The Court: By looking at the records which you have brought here, and which you have now identified, would you be able to testify to what those payments are? I say, by looking at the record, would you be able to—

The Witness: Payments of Federal income taxes.

The Court: No, no. I mean what the amounts (52) were—

The Witness: Yes.

The Court: —and what dates they were paid?

The Witness: We have schedules made up.

The Court: You may inquire along that line, if you wish.

Q. Have you prepared—

Mr. Fennelly: Oh, excuse me, your Honor. I object to any inquiry as to payments made by Mrs. Loretta Costello, which I would gather may be included in this record from looking at it.

The Court: On what ground?

Mr. Fennelly: That they are irrelevant and immaterial.

The Court: I hardly think so, in view of the theory on which the Government announced it is

proceeding. I think they might both be relevant and material.

Mr. Fennelly: Mrs. Costello made the payments and the returns will show that she filed income tax returns and that she had income.

The Court: That may be, but we are in the first day of the trial, that is supposed to take five or six weeks. I am going to let it come in. I am not going to try now to try the whole case the first day, and I shall allow it to come in, and I will entertain a motion (53) to strike it out at the appropriate time, if necessary.

Mr. Fennelly: Exception.

The Court: Or, if necessary, the jury will be instructed as well as the Court can do it.

Mr. Fennelly: If the Court instructs them—I may suggest, it is very difficult, I think, with the jury to segregate from the mass of figures we have here, if testimony is allowed in about Mrs. Costello's payments of her own income taxes which has nothing to do with this defendant—

The Court: That may be, but the theory offered here is that this lady had no income. That is the representation the Government has made in its opening.

Mr. MacMahon: That is right.

The Court: That whatever income she had, she got from the defendant.

Mr. Fennelly: I am not—I agree with your Honor. I'll go beyond the Government's opening because I don't take that as the gospel. The fact is she had her own income.

The Court: I would certainly be surprised if you took a different position, Mr. Fennelly, but that is not quite the impact of my statement.

(54) Mr. MacMahon: May I proceed, your Honor?

The Court: Yes.

Q. Mr. Murphey, from Government's Exhibit 20—

The Clerk: Still for identification, counselor.

Mr. MacMahon: His Honor has admitted it for the limited purpose, I understand.

The Court: No, I haven't admitted it at all.

Q. From Government's Exhibit 20 for—

The Court: But what I was suggesting was that if all you wanted to do was to get before the jury the amounts and dates of certain payments that there was a way to do it without putting in any exhibit, and that would be to ask the witness, if he needs to, to refresh his recollection and he may do so by looking at any document that he has available.

Mr. MacMahon: I have a simple schedule, your Honor.

The Court: Very well.

Q. Mr. Murphey, from Government's Exhibit 20 for identification and from withholding payments made, as shown on Federal income tax returns filed in your office which have been introduced here in evidence, have you prepared a schedule showing payments made to the Upper Manhattan District of the Internal Revenue District by Frank and Loretta Costello from October 18, 1937, (55) to December 31, 1949? A. I have, sir.

Mr. Fennelly: Just a minute. Your Honor, I am objecting to the form of the question. It states facts as far as I know that are not in evidence.

There have been no withholding statements produced to my knowledge.

If they have been, what exhibit is it?

Mr. MacMahon: They are on the income tax returns, your Honor.

The Court: Are the returns already in evidence?

Mr MacMahon: Yes, sir, your Honor.

The Court: That is what I thought.

Mr. Fennelly: It modifies his question, so I understand—

The Court: It is represented now that these withholdings, whatever they be, are reflected in the income tax returns already in evidence.

Mr. Fennelly: That is all right.

Q. Is this the schedule that you prepared? A. Yes, sir.

Mr. MacMahon: I offer it in evidence. Will you mark it first?

(Marked Government's Exhibit 21 for identification.)

(56) Mr. Fennelly: Now, I object to the list because it does not break down the payments made by Mrs. Costello and those payments made by Mr. Costello, nor does it break down the payments given for the years; they have totals.

The Court: May I see it?

Mr. Fennelly: And it is very important for me, in order to examine the witness, that I have specified the payments made.

The Court: I think that is probably true.

It is conceded, is it not, that in some of these years there were separate returns filed?

Mr. MacMahon: There were separate returns filed in some of the years, yes, your Honor. That is exactly what is shown in Exhibit 20, your Honor, to which Mr. Fennelly objects.

Mr. Fennelly: Well, it is not what is shown in Exhibit 20, my dear man. That is a compilation, and you find no such total in this exhibit as you tell the Court are there.

The Court: Now, look, we are going to be here a long time, even with the best of procedure. Let us not lengthen it by any discussion. Let me try to rule on the objection here.

I think the objection is well taken to the (57) extent that they ought to be separated by the payors for whatever years there were payments.

What was the other point?

Mr. Fennelly: And I would like a breakdown, for instance, a lumping of a year. I would like to know—an itemization, which is perfectly easy to do, because that is what ostensibly would be shown in the record. In other words, on such-and-such a date payment was made for so much.

Mr. MacMahon: Your Honor, I would like to be heard on this in the absence of the jury.

Mr. Fennelly: I don't know what is to be heard about it. What I wanted is to be able to ask the witness a question about a few of the items.

The Court: Well, of course, you could do that on cross examination.

Mr. Fennelly: I can't, your Honor, unless we have them broken down.

The Court: Sure, you can. He says he made these from certain records. You could ask him whether it is one payment or more than one payment, and if so when the separate payments were made.

Mr. Fennelly: Wouldn't it be easier, when we come to strike, to have a separate list of Mr. and Mrs., and also a list of—

(58) The Court: I agree with you. I think it would be easier for us all around, and certainly clearer for the Court and perhaps for the jury as well to do that. But in any event, I am going to direct that they be broken down at least to show the payments that were made by the defendant and those that were made by his wife, rather than lumping them together.

Mr. MacMahon: I would like to be heard on this. The theory of the Government's case is that this is one taxpayer's money throughout.

The Court: I understand.

Mr. MacMahon: It was prepared on that basis to indicate—to present it on that basis. And to separate it out at this time, your Honor, would put the whole case out of stride.

Now, these things will go in, and at the end of the case I assume Mr. Fennelly will make his argument, whatever it may be, that we haven't shown this or tried to show that, and if we have failed at that point to establish that it is one taxpayer that we are concerned with here, that it is one income, then there is something to his point, but at this stage of the game there is not.

The Court: Well, I am afraid I disagree with you, Mr. MacMahon. The ruling stands. I can't see how listing the payments, by whoever made them, is going to (59) throw the case out of kilter at all.

Mr. MacMahon: Your Honor, the records do not show who made the payments; they simply show as to whose account they were paid—

The Court: Just a minute. I haven't suggested that the record should show who made them. I have

suggested merely that they should show for whose tax return they were paid.

Mr. MacMahon: All right, sir. We will be glad to submit such a schedule.

May I excuse the witness at this time, subject to recall, so that we will have an opportunity to prepare such a schedule?

The Court: Oh, sure.

Mr. MacMahon: That is all.

Mr. Fennelly: I, of course, will have my—

The Court: You may reserve. You can have it now if you wish, as far as he has gone, or you may reserve it until he returns and completes his testimony.

Mr. Fennelly: No, I would just as leave reserve it, your Honor.

The Court: Very well.

Mr. MacMahon: John J. Regan.

JOHN J. REGAN, called as a witness on behalf (60) of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Would you state your full name, sir? A. John Joseph Regan.

Q. And what is your occupation, Mr. Regan? A. I work for the director of internal revenue, lower Manhattan.

Q. What do you do there? A. Supervising tax account clerk.

Q. Are you familiar with the books and records of that office? A. Yes, sir.

Q. Are records kept in your office showing payments made in your district by Frank and Loretta B. Costello on Federal income taxes for the year 1943? A. Yes.

(Marked Government's Exhibit 22 for identification.)

Q. I show you Government's Exhibit 22 for identification and ask you to identify it. A. This is a photostatic copy of a tax assessment list for the estimated tax for the year 1943, name of Frank and Loretta B. Costello, 115 Central Park West.

Mr. Fennelly: I am sorry, I can't hear the witness, your Honor.

The Court: Would you keep your voice up, Mr. Regan?

(61) The Witness: I am sorry.

A. It is a photostatic copy of an assessment list for the year 1943, estimated tax, in the name of Frank and Loretta B. Costello, 115 Central Park West, New York City.

Q. Does it show payments made by those taxpayers? A. It shows a credit on payment of seventeen thousand, five—

Mr. Fennelly: Just a minute.

The Court: Just a minute. The answer is yes or no.

The Witness: Oh, I am sorry.

A. Yes.

The Court: Does it appear from that record whether that was a payment on a joint return, or whether it was a combination of payments on separate returns?

The Witness: It is on a joint return.

The Court: Very well.

Mr. MacMahon: I offer Government's Exhibit 22 for identification in evidence.

Mr. Fennelly: I object to it, your Honor, being prior to the indictment years, and also that it does not show what part of the amount was paid by Mrs. Costello and what part by Mr. Costello.

The Court: Overruled.

(Government's Exhibit 22 for identification (62) received in evidence.)

Q. Now, Mr. Regan, could you tell me what payments were made, in what amount and on whose account? A. Payment on this one of $17,530.74.

The Court: What was that?

The Witness: $17,530.74.

Q. When was that made? A. 9 22 43 is the date of the assessment.

Q. On whose account was it applied? A. Frank and Loretta B. Costello.

Q. All right. Are there any other payments? A. Yes. There is another payment of $15,270.35, the name of Frank and Loretta B. Costello. The date of that payment is 12/20/43.

Mr. MacMahon: Your witness, Mr. Fennelly.

Mr. Fennelly: Could I have exhibits, please?

Mr. MacMahon: Which exhibits?

Mr. Fennelly: 1 to 10.

(Mr. MacMahon hands exhibits to Mr. Fennelly.)

John J. Regan—for Government—Cross

Cross Examination by Mr. Fennelly:

Q. From looking at Government's Exhibit 22, can you tell us who made the payment on this tax, whether it was Mr. or Mrs. Costello? A. Not from the assessment sheet, no.

(63) Q. And you don't know? A. No, I don't.

Q. Now, I see a number on here. It looks like 3,110,000 some odd. What is that? A. That is the account number.

Q. An account number? A. That is right.

Q. How many collectors districts,—I guess you now call them directors districts, do you? A. Yes.

Q. (Continuing) —are there in the United States? A. I wouldn't know.

Q. And you only had a record of payments made in your district? A. Lower Manhattan District.

Q. You were Lower Manhattan. And that has a number, hasn't it? A. Not any more. It used to be the Second District. It is called Lower Manhattan now.

Q. And each collector's district throughout the United States keeps their own records, is that right? A. Yes, sir.

Q. And you have no central records of payments? A. No.

Q. And every state in the Union has several collectors' districts, do they not? A. Yes.

Q. Now, were you before the Grand Jury in this case? A. No.

Q. Where is your original assessment list? A. Down at the office, in the Lower Manhattan District.

(64) Q. And that original assessment list was not before the Grand Jury in this case, was it? A. That I wouldn't know, sir.

Q. Well, will you produce it?

Mr. MacMahon: I will be glad to make it available for inspection, your Honor. Under the statutory regulations—

The Court: Is it in the court room now?

Mr. MacMahon: No, your Honor. If Mr. Fennelly wishes to have that inspected, under statutory regulations all of the taxpayers' names must be kept from him. That, of course, as your Honor understands, is secret by statute.

Mr. Fennelly: I just want to show that it was not before the Grand Jury.

Mr. MacMahon: It is immaterial, your Honor.

The Court: I should think so. Do you object to the question?

Mr. MacMahon: Yes, your Honor.

The Court: Sustained.

Mr. Fennelly: Well, then, I would like to see the original for other purposes.

Mr. MacMahon: Your Honor, there are voluminous records. If Mr. Fennelly wants to see it, the inspection would have to be made in the Lower Manhattan District.

(65) The Court: All right.

Q. And there is no mark—

The Court: Pardon me. Could that inspection be arranged for sometime after the close of the court session on one of the days?

Mr. MacMahon: If Mr. Fennelly will tell me what day he will do it, I will make the necessary arrangements, your Honor.

The Court: Very well.

Mr. Fennelly: I will do it any day the office is open when I don't have to be in court.

The Court: That gives you plenty of riding room. But maybe you can work it out between you.

Mr. MacMahon: Your Honor, I will just stand ready at Mr. Fennelly's request.

The Court: All right. Court doesn't open until 10.30, and usually recesses at 4.30. I don't know whether the office is open on Saturday or not.

The Witness: No.

The Court: There you are.

Q. And there is no mark on this Exhibit 22 of the Government's, indicating that this was ever before the Grand Jury either, is there?

Mr. MacMahon: Your Honor, I object to this.

The Court: Sustained.

(66) Mr. Fennelly: That is all.

The Court: All right. You may step down.

(Witness excused.)

Mr. MacMahon: Mr. James A. Ronayne.

JAMES A. RONAYNE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Will you state your name, please? A. James A. Ronayne.

Q. And what is your profession, Mr. Ronayne? A. I am an attorney.

Q. And were you formerly employed with the Bureau of Internal Revenue? A. I was.

Q. And what were your duties as an employee of the Bureau of Internal Revenue? A. I was a special agent in the Intelligent Unit of the Bureau of Internal Revenue.

Q. And in the course of your official duties did you have occasion to meet the defendant Frank Costello— A. I did.

Q. —during the month of October, 1937? A. I had occasion to meet Frank Costello.

Q. Do you see the defendant Frank Costello in the court room? A. I do.

(66a) Q. Would you indicate him, please? A. The gentleman standing up there.

Q. Did you have Mr. Costello in your office during that period in October, 1937? A. Well, I haven't testified it was October, 1937.

The Court: No. You are being asked if it was.

A. I don't recall specifically the date.

(67) Q. Did you have occasion to take a question and answer statement from the defendant Frank Costello? A. I did.

(Marked Government's Exhibit 23 for identification.)

Q. I show you Government's Exhibit 23 for identification and I ask you to identify it. A. That is a transcript of a statement I took from the defendant Frank Costello.

Q. Was that statement signed by Frank Costello in your presence? A. Yes, it was.

Q. Was that statement taken under oath by you—administered by oath? A. Yes, it was.

Q. Were there changes, ink changes, made in the statement, initialed by Frank Costello, on each page in your presence? A. Well, I had each page initialed—

Mr. Fennelly: That is assuming they were. I think it is a little premature.

Q. Was the statement initialed on each page in your presence by Frank Costello? A. Yes, it was.

Mr. MacMahon: I offer the statement in evidence.

(A pause.)

Mr. Fennelly: I object to this statement on the ground that it contains information other than a net worth statement, if that is what it is supposed to be offered as, going back to prior years, and other information having (68) nothing to do with net worth; that it is an extra judicial statement, not admissible until the proof of the corpus delicti in this case.

The Court: Can you go on with something else and let me have a chance to read it at the recess? I mean, have you some other—

Mr. MacMahon: Other witnesses, your Honor.

The Court: No, I mean with this witness.

Mr. MacMahon: No; this is all I have with this witness.

The Court: Very well.

(A pause.)

The Court: Will you come up, gentlemen.

(Side bar discussion out of hearing of the jury.)

The Court: All right, the jury may take a recess.

(The jury retires.)

(Counsel enter the robing room with the Judge.)

(69) The Court: We really weren't recessing all that time, ladies and gentlemen; we were working.

And I think probably we have made some headway. I hope we did.

All right.

Mr. MacMahon: Your Honor, I at this time renew my offer subject to the Government's Exhibit 23 for identification, as to those parts which have not been deleted in our conference with Mr. Fennelly.

The Court: Yes.

Mr. Fennelly: May I add the further objection, your Honor, that the—

The Court: Before you state your objection, Mr. Fennelly, perhaps it would make the record more intelligent to anybody who is required to read it at any time that at the time Government's Exhibit 23 for identification was offered it was objected to, and the Court recessed and conferred with counsel, as a result of which a series of questions in that exhibit were eliminated from the statement, that is, eliminated from the offer and, then, what is being offered now is Exhibit 23 for identification minus those questions and answers in that exhibit which were eliminated.

Mr. MacMahon: Your Honor, could I substitute a blocked out photostat showing those eliminations and (70) leaving only the balance for the original exhibit?

The Court: You may. I think that would be quite appropriate, and blocking out anything else on the exhibit which is not included in the offer.

Mr. MacMahon: Yes, your Honor.

The Court: Very well.

Now, Mr. Fennelly, you may state your objection to the exhibit as amended.

Mr. Fennelly: And reserving my right to object